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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,

Petitioner,

vs.

CITY OF LONGVIEW, TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT, AND BRIEF THEREON.

J. N. Saye,
Longview, Texas,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of The First National Bank of Longview, Texas, respectfully shows to this Honorable Court:

A

Statement of Matters Involved

The question at issue in this case is whether the City of Longview, Texas, is authorized by Section 5219, Revised Statutes of the United States, 12 U. S. C. A., section 548 (Appendix A), *to assess ad valorem taxes against the shares of petitioner and collect such taxes from the owners of said shares in addition to a like tax levied against said shares and collected by the State of Texas.*

The District Court answered in the negative. The Fifth Circuit Court of Appeals reversed the District Court's judgment and answered in the affirmative.

Petitioner is a national banking association, duly organized and existing under the laws of the United States. Respondent is a "home rule" municipal corporation, which was created and which exists under Articles 1165 to 1182, Vernon's Revised Civil Statutes of the State of Texas, 1925, as amended.

The City of Longview, Texas, assessed and collected ad valorem taxes for the years 1943 and 1944, aggregating $7,727.50, against the shares of stock of The First National Bank of Longview, Texas. The bank, acting as agent of its shareholders, paid said taxes, under protest, to avoid penalties, and brought this suit for its shareholders to recover the amount of taxes so paid (R. 1-7).

Said taxes were in addition to taxes assessed against said shares and collected by the State of Texas for the same years (R. 6).

Against the bank's complaint, which challenged the city's authority to assess and collect said taxes under Section 5219, Revised Statutes of the United States, 12 U. S. C. A., section 548, the city filed a motion to dismiss on the ground that the complaint did not state a claim against it upon which relief could be granted (R. 8). The District Court overruled the motion and entered judgment for the bank against the city for the full amount of the taxes, interest and costs (R. 8-9). The Fifth Circuit Court of Appeals reversed and remanded the cause with direction to dismiss the complaint (R. 18).

Reasons Relied On for Allowance of the Writ

I

In deciding that Congress has, by Section 5219 of the Revised Statutes of the United States, 12 U. S. C. A., sec. 548, authorized the City of Longview, Texas, to assess and collect ad valorem taxes against the shares of stock of petitioner, a national banking association, in addition to like taxes assessed and collected against said shares for the same years by the State of Texas, the Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

II

The aforesaid decision of the Circuit Court of Appeals decides a federal question in a way probably in conflict with applicable decisions of this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals, Fifth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 11,414, City of Longview, Texas, Appellant v. the First National Bank of Longview, Texas, Appellee, and that the judgment of the Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

J. N. Saye,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,

Petitioner,

vs.

CITY OF LONGVIEW, TEXAS,

Respondent

BRIEF

I

The Opinion of the Court Below

The opinion of the Circuit Court of Appeals has not been published, but it appears at pages 15-17 of the record herein.

II

Jurisdiction

The date of the judgment to be reviewed is December 3, 1945 (R. 18).

The Federal District Court acquired jurisdiction of this cause under Section 24 of the Judicial Code, Title 28 U. S. C. A., 41 (1). The statute under which this cause of action arises is Section 5219 of the Revised Statutes of the United States, Title 12 U. S. C. A., 548. (*Hammerstrom* v. *Toy Nat. Bank*, 81 F. 2d 628.)

This Court has jurisdiction of this application under Supreme Court Rule 38, paragraph 5 (b).

III

Statement of the Case

A full statement is set forth in the petition under the heading, "Statement of Matters Involved," and in the interest of brevity is not repeated.

IV

Specification of Error

The Circuit Court of Appeals erred in finding and holding that Section 5219, Revised Statutes of the United States, 12 U. S. C. A., 548, authorizes and empowers the respondent to assess and collect the taxes in question.

V

Summary of Argument

Point A. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

Point B. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court.

POINT A

The Question of Federal Law

The Circuit Court of Appeals said that "The only question presented and upon which decision must turn is: 'Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., permit, under state legis-

lative grant, a municipal corporation to tax the shares of stock of national banks?'" (R. 16).

The court answered the question in the affirmative, but the posed question is too broad.

The question is:

Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A. permit, under state legislative grant, a Texas "Home Rule" municipal corporation to tax the shares of stock in national banks, when the State of Texas, herself, taxes the same shares for her own use and benefit.

Section 5219, *supra*, provides:

"The legislature of each State (see Appendix 'A') may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause."

Subdivision (b) of this clause prohibits discrimination in taxing shares of national banks against them and in favor of other moneyed capital.

Subdivision (c) prohibits discrimination against national banking associations where a state adopts either the third or fourth form of taxation.

Subdivision (d) prohibits dividends derived from said shares from being taxed at a greater rate than is assessed upon the net income from other moneyed capital.

Subparagraph 2 of said section provides the method for taxing shares of nonresident shareholders.

Subparagraph 3 reads as follows:

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed."

Subparagraph 4 has to do with taxes assessed against national bank shares prior to March 25, 1926.

The analysis of the statute tells us that the only authority which Congress has given to the states, their municipalities, and their political subdivisions to tax the shares of national banking associations is found in the first paragraph of section 5219, and this paragraph grants the authority to the several "States," and it appears crystal clear that only *one* tax may be assessed, whether it be against the shares or includes dividends derived therefrom in the taxable income of the owner or holder thereof, or whether the association is taxed on its net income or according to or measured by its net income.

Art. 7165, Vernon's R. C. S. of Texas, 1925, as amended, (Appendix C), enacted in 1895, provides that, for the purpose of state taxation, shares of national banking associations shall be rendered to and assessed by the assessor of the county in which the bank is located.

The taxes here complained of were assessed against the shares of petitioner by respondent and they are in addition to those assessed by the State for the same periods of time under Art. 7165.

The Legal Status of Respondent

The City of Longview, Texas, is a Texas "Home Rule" Municipal Corporation. Its principal powers are enumerated in Art. 1175, Vernon's R. C. S. of Texas, 1925, as amended. It has full power of local self-government; the power to acquire, own and dispose of property; "To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of this State;" and to "provide for the collection of all taxes, including the right to impose penalties for delinquent taxes." In levying and collecting taxes the respondent does not act as an agent of the state, but for itself alone. It makes no accounting to the state for any of the taxes which it collects. It is, therefore, difficult to understand how the Circuit Court of Appeals could hold that the respondent's acts in levying and collecting the taxes in question were the acts of the State of Texas and authorized by Section 5219.

That Court said "While this question has not been directly decided by the Supreme Court of the United States, cases involving taxes levied by a municipality under this section have been before that Court many times and the right to levy and collect such taxes has been apparently conceded" (R. 17). The Court then cites six cases to support its statement. We should like to spend a few minutes with them to show that they are of no help in arriving at a correct decision of the question presented in the case at bar.

The lower Court seems to be in error as to the question involved in *Evansville National Bank* v. *Britton*, 105 U. S. 322. Britton was the Treasurer of Vanderburgh County, Indiana, and the suit challenged the validity of an Indiana statute. It was decided on April 3, 1882.

Adams v. *Nashville*, 95 U. S. 19, decided Nov. 5, 1877; *Mercantile National Bank* v. *City of New York*, 121 U. S.

138, decided April 4, 1887; *National Bank of Redemption* v. *City of Boston*, 125 U. S. 60, decided March 19, 1888; and *Merchants National Bank* v. *City of Richmond*, 256 U. S. 635, decided June 6, 1921, each challenged the validity of certain taxes levied against their shares, claiming that they violated the original Act of June 3, 1864 as amended by an Act of February 10, 1868, which provided "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." *National Bank of Commerce* v. *Seattle*, 166 U. S. 463, decided April 12, 1897, is a case of the same kind. The opinion really tells us nothing, except that the complaint in the case is substantially the same, so far as any federal question is concerned, as the complaint in *First Nat. Bank* v. *County of Chehalis*, 166 U. S. 440, decided April 12, 1897, and that case is another case which charges illegal discrimination against the bank's shareholders.

As stated above, the question at issue in the case at bar was not at issue and was not discussed in either case cited by the Circuit Court of Appeals, but Section 5219, as it stood when those cases were decided, read "nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by *authority* of the State within which the association is located (Appendix B). Section 5219 does not now read "imposed by authority of the State." It now reads "The several States may tax said shares." (Our italics.)

The rule laid down by this Court is that national banks are not merely private moneyed institutions, but that they are agencies of the United States, created under its laws to promote its fiscal policies, and, therefore, the *banks*, their *properties*, and their *shares* cannot be taxed under *state* authority, except as Congress permits, and then only

in conformity with the restrictions. *First National Bank of Guthrie Center* v. *Anderson*, 269 U. S. 341; *Owensboro Nat. Bank* v. *City of Owensboro*, 173 U. S. 664.

Failure of Congress to authorize such taxation amounts to prohibition. *First National Bank* v. *Richmond*, 39 Fed. 309.

The only place in Section 5219 where any subdivision of a state is mentioned is in paragraph 3 where it is stated that "Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed." This suggests that Congress did not intend that the subdivisions of a State should tax any property of national banks other than their real property. (*First National Bank* v. *Anderson*, 269 U. S. 341, 347.) Indeed it would be impossible for the municipal corporations and the political subdivisions of a state to levy any tax against the shares of a national banking association, if the state elected to adopt either methods 2, 3 or 4 of taxation provided by the statute.

So far as this petition is concerned, it may be conceded that the Circuit Court of Appeals is correct in its statement that "A municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the State for the convenient administration of government." But Section 5219 does not authorize the several States and the instrumentalities of the several States "for the convenient administration of government," to tax the shares of national banking associations. The authorization goes to the several States only.

Thus, it is shown that the Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and it also

appears that the decision of the Circuit Court of Appeals is erroneous.

POINT B

Probable Conflict with Decisions of This Court

This Court, speaking through Mr. Justice Van Devanter, in *First National Bank* v. *Anderson, supra*, at page 347, said: "National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property, and their shares cannot be taxed under state authority, except as Congress consents, and then only in conformity with the restrictions attached to its consent. *Des Moines National Bank* v. *Fairweather*, 263 U. S. 103, 106, 44 S. Ct. 23, 68 L. Ed. 191, and cases cited. The early legislation respecting these banks contained a restricted consent, which afterwards became section 5219 of the Revised Statutes. By it Congress assented to the taxation of the shares to their owners under the laws of the state where the bank was located, subject to the restriction that 'the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state,' *and further assented to the taxation of the real property of the bank for state, county, and municipal purposes 'to the same extent, according to its value, as other real property is taxed.'*" (Our italics.)

The words in the opinion which we have italicized seem to us to indicate that it is the opinion of this Court that Section 5219 limits the municipal corporations of the states in their taxation of national banks, their shares and their properties, to the banks' real property.

The decision of the Circuit Court of Appeals in the case at bar of necessity holds that the express grant of power to the States to tax shares of national banking associations

carries with it an implied power to the states to authorize their municipal corporations to also tax said shares. This holding is at least contrary to the principles announced by this Court. See also *Owensboro Nat. Bank* v. *City of Owensboro*, 173 U. S. 664.

Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the rights of the petitioner, guaranteed to it by the federal statutes, may be protected, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and finally reverse it and affirm the judgment of the District Court.

Respectfully submitted,

J. N. Saye,
Counsel for Petitioner.

APPENDIX A

State Taxation

Section 5219, Revised Statutes

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: Provided, however, That a State which imposes a tax on or according to or measured by the net income of, or a fran-

chise or excise tax on financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. R. S. § 5219; Mar. 4, 1923, c. 267, 42 Stat. 1499; Mar. 25, 1926, c. 88, 44 Stat. 223.

APPENDIX B

Revised Statutes of United States

1878

Sec. 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

State Taxation, 3 June, 1864, c. 106, s. 41, v. 13, p. 111.

10 Feb., 1868, c. 7, v. 15, p. 34. Bank of Commerce v. New York City, 2 Bl., 620; Van Allen v. The Assessors, 3 Wall., 573; People v. The Commissioners, 4 Wall., 244; Bradley v. The People, 4 Wall., 459; National Bank v. The Commonwealth, 9 Wall., 353; Lionberger v. Rouse 9 Wall., 468; Hepburn v. The School Directors, 23 Wall., 480; People v. Commissioners of Taxes, &c., 94 U. S. 415; Bank of Omaha v. Douglas Co., 3 Dill., 299; First National Bank v. Douglas Co., 3 Dill., 330.

APPENDIX C

Article 7165

Revised Civil Statutes of Texas

Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers, or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. Acts 1895, p. 37; G. L. vol. 10, p. 767.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers, or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. Acts 1895, p. 37; G. L. vol. 10, p. 767.

FEB 12 1946
CHARLES ELMORE CROPLEY

In the

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OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,
Petitioner,

v.

CITY OF LONGVIEW, TEXAS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Respondent desires to avail itself of the privilege granted in Section 3 of Rule 38 of this Honorable Court to file herein forty printed copies of an opposing brief to the petition for writ of certiorari, filed herein by Petitioner, and to such end would respectfully show unto the Court:

STATEMENT

Petitioner's Statement cannot be accepted as correct since facts are stated upon assumption with reference to collection of taxes by The State of Texas. The Circuit Court of Appeals makes a more accurate and satisfactory statement, which Respondent adopts as a sufficient statement of the nature and result of the suit. *City of Longview,*

Texas v. The First National Bank of Longview, Texas, 152 Fed. (2d) 97.

The Petitioner, under the heading "Reasons Relied On for Allowance of the Writ" has enumerated two reasons under Supreme Court Rule 38, paragraph 5, and makes argument concerning them under Petitioner's Points A and B, and in answer thereto Respondent respectfully states:

ARGUMENT

The Circuit Court of Appeals said that:

> "The only question presented and upon which decision must turn is: Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., permit, under state legislative grant, a municipal corporation to tax the shares of stock of national banks?" (R. 16.)

Respondent considers this the sole question herein involved, but if it be in error thereon, Respondent says that if the Statement of Petitioner that "the posed question is too broad" be held to be correct, then Petitioner's analysis of Section 5219, Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., should itself be analyzed, for Petitioner in its analysis has failed to give consideration except to selected portions of said Article, it having briefly only mentioned Subparagraph 2 of said Article, which when fully set out, reads:

> "2. The shares of any national banking association owned by non-residents of any State shall be taxed by the TAXING DISTRICT *OR* BY THE STATE where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such non-resident shareholders." (Capitals and italics ours.)

A full reading of the quoted portion of the Article, as herein quoted, clearly expresses the intent of Congress to authorize taxation by other than the several "States" as is urged by Petitioner in its brief, and the holding that his contention is correct would, under the quoted paragraph of the Article, permit the taxing of shares of non-residents by a taxing district other than the State itself, while the shares of resident owners would be free from taxation by the taxing district, and Respondent says that such discrimination is not intended therein and that Congress had no intention of removing or restricting the right of a taxing district, of which a municipality would be one, that has been recognized by this Court for more than eighty years.

In the case of *Supervisors of the County of Albany v. Edward N. Stanley*, 105 U. S., 305; 26 L. Ed. 1044, which had under consideration an act of the State of New York for the taxing of shares of national banks, the particular tax having been assessed by the Board of Assessors of the City of Albany, the Court, speaking through Justice Miller, said in regard to said state article "which was evidently intended to meet the requirements of the Act of Congress in relation to State taxation of the shares of national banks," which article is copied in full in the opinion and, among other things, contains the following:

> "Said shares shall be included in the valuation of the personal property of such stockholder in the assessment of taxes at the PLACE, TOWN or WARD where such bank or banking association is located, and not elsewhere." (Capitals ours.)

And further in said opinion Justice Miller specifically states as follows:

> "It follows that the assessors were not without authority to assess national bank shares; that where no debts of the owners existed to be deducted, the assessment was valid and the tax paid under it a valid tax."

The case of *First National Bank of Louisville v. The Commonwealth of Kentucky*, 76 U. S., 353; 19 L. Ed. 701, the Court, speaking through Justice Miller, who wrote the opinion in the case next above, held on the question whether or not officers of national banks should be required to pay tax on the shares of stockholders, as follows:

> "It is the common, if not the only, mode of doing this in all the New England States, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the State, of the bank and paid over to the local municipal authorities."

In this case the Court further said:

> "That while Congress intended to limit state taxation to the shares of the bank as distinguished from its capital, and to provide against the discrimination of taxing said banks unfavorable to them, that compared with the shares of other corporations and with other moneyed capital it did not intend to prescribe to the States the mode in which the tax should be collected. That the mode under consideration is the one which Congress itself has adopted in collecting tax on dividends and income arising from bonds of corporations. It is the only mode which certainly and without loss secures the payment of tax on all the shares, resident or non-resident, and, as we have already stated, it is the mode which experience has justified in the New England States as the most convenient and proper in

> regard to the numerous wealthy corporations of that State. It is not to be readily inferred, therefore, that Congress intended to prohibit this mode of collecting taxes which they expressly permitted the States to levy."

Petitioner in its brief states that the question at issue in the case at bar was not an issue and not discussed in either case cited by the Circuit Court of Appeals. In other words, that the Amendments of 1923 and 1926 changed not only the wording but the entire meaning and purpose of the Act.

In answer to this contention we respectfully call the Court's attention to the matter of the application of *Wm. Buder, et al.*, for writ of mandamus, 271 U. S. 461; 70 L. Ed. 1036, in which this Court said:

> "The Act of 1923 enlarged the scope of the state's power to tax national banks. * * * The State confessedly had the same power to tax the shares that it had before Congress enacted the 1923 Amendment."

See also *First National Bank v. Anderson*, 269 U. S., 341, 70 L. Ed. 304, in which the Court said:

> "By the Act of March 4, 1923, chap. 267, 42 Stat. at L. 1499, Fed. Stat. Anno. Supp. 1923, p. 84, passed after the levy of the tax in question, Section 5219 of the Revised Statutes was amended by extending the consent of Congress to any one of three forms of taxation. * * * But, assuming that this is true, the situation is not changed; for the reënactment did no more than to put into express words that which, according to repeated decisions of this court, was implied before."

Petitioner evidently takes the position that Article 7165, Vernon's Revised Civil Statutes of Texas, 1925, as amend-

ed, which is attached to its brief as Appendix C, is the taxing statute under which Texas has granted municipal corporations the right to tax shares of national bank stock.

Texas has several other statutes under which shares of stock of national banks are taxable, namely Article 7145, Article 7147 and Article 7166 (Appendix A, B, and C).

The Texas statutes have been construed by the appellate courts of Texas and clearly hold that municipalities have the right to tax shares of national bank stock, either under Article 7166 (Appendix C), or under Articles 7145 and 7147 (Appendix A and B).

City of Marshall v. State Bank, 127 S. W. 1083;

Dallas Joint Stock Land Bank of Dallas v. State, 137 S. W. (2d) 993;

First Joint Stock Land Bank of Chicago v. City of Dallas, 167 S. W. (2d) 783;

First National Bank of Lampasas v. City of Lampasas, 78 S. W. 42.

The Supreme Court will always follow and adopt the decisions of state courts in construction of their own constitution and statutes, when such construction has been settled by a decision of its highest judicial tribunal. *NeSmith v. Sheldon*, 48 U. S. 812; 12 L. Ed. 925.

Shares of stock in national banks are personal property. They are so made in express terms by an Act of Congress under which said banks are organized. *Tappan v. The Merchants National Bank of Chicago*, 86 U. S. 490; 22 L. Ed. 189.

In view of the hereinbefore set out decisions and direct holding in the cases of *Board of Supervisors of the County of Albany v. Edward N. Stanley, supra,* and *First National Bank of Louisville v. The Commonwealth of Kentucky, supra,* Respondent most respectfully insists that Petitioner's Point A should not be considered herein, since the above decisions by this Court cancel the ground stated for granting of the writ herein; and, as to Petitioner's Point B, Respondent respectfully shows that the herein cited cases show that the decision of the Circuit Court of Appeals herein follows the applicable decisions of this Court, and that Petitioner fails to cite one decision of this Court holding contrary to the said decision of the Circuit Court of Appeals herein.

Beyond all doubt, the Circuit Court of Appeals has correctly decided this case, and the Petition for Certiorari should be denied. THEREFORE,

It is respectfully prayed that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

H. P. SMEAD,

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APPENDIX "A"

ARTICLE 7145

Revised Civil Statutes of Texas

All property, real, personal, or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed.

APPENDIX "B"

ARTICLE 7147

Revised Civil Statutes of Texas

Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all money at interest, either within or without the State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above his indebtedness; all public stock and securities; all stock in turn-pikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within this State; all shares in any bank organized or that may be organized under the laws of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. Acts 1879, p. 39; G. L. vol. 8, p. 1339.

APPENDIX "C"

ARTICLE 7166

Revised Civil Statutes of Texas

Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the share of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes

upon the same. Nothing herein shall be so construed as to tax national or State banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. Acts 1885, p. 106; G. L. vol. 9, p. 726.